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IN THE

# Supreme Court of the United States

October Term, 1959

No. ~~664~~ 29

GIACOMO REINA,

*Petitioner,*

—against—

UNITED STATES OF AMERICA,

*Respondent.*

## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT


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## TABLE OF CONTENTS

## AUTHORITIES CITED

### *Cases*

*Statutes*



*United States Constitution*



*Supreme Court Rules*

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## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

TO THE SUPREME COURT OF THE UNITED STATES:

Giacomo Reina, the petitioner herein, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit, entered on the 30th day of December, 1959 affirming a judgment of conviction of the petitioner in the United States District Court for the Southern District of New York, dated February 2, 1959 which adjudged him in contempt of court for refusing to testify before a grand jury pursuant to Title 18, United States Code, Section 1406 and sentenced petitioner to a term of 2 years imprisonment with a 60 day purge

clause, said sentence to commence at the termination of a sentence petitioner was then serving (R. 47, 50a).*

## Opinion Below

The opinion of the United States Court of Appeals for the Second Circuit affirming the aforesaid judgment adjudging the petitioner to be in contempt of court and which was entered in the United States District Court for the Southern District of New York is not yet officially reported, .... F. 2d ...., United States Court of Appeals, Second Circuit Opinions, October Term, 1959, #169, Page 425. A copy of this opinion is annexed to this petition as Exhibit 1.

At the time that the District Court adjudged the petitioner to be in contempt of court it rendered an opinion which is cited as *In re Reina*, 170 Fed. Supp. 592.

## Jurisdiction

The jurisdiction of the United States District Court for the Southern District of New York, was invoked in view of the fact that the contempt charged was based upon alleged disobedience by petitioner to an order of said Court, to wit: his refusal to testify before a grand jury subject to the provisions of Title 18, United States Code, Section 1406, as ordered by said Court in its order dated December 17, 1958 (R. 16, 16a). Said contempt proceeding was pursuant

* Numerals preceded by letter "R." refer to page number of Record on Appeal to the Court of Appeals. Numerals followed by letter "a" refer to page number of Appendix to petitioner's brief in the Court of Appeals.

to Title 18, United States Code, Section 401 (3). No petition for a rehearing of the appeal herein was made.

The jurisdiction of this Court is invoked under Rule 19 of the Supreme Court Rules and Title 28 U.S.C., Section 1254 (1) on the ground that review by the Supreme Court by a writ of certiorari is sought of a judgment of affirmance on appeal by the United States Court of Appeals for the Second Circuit.

Certiorari is sought on the grounds that the United States Court of Appeals for the Second Circuit has decided an important question of Federal law which should be clarified and made more definite and certain by this Court; has decided a Federal question of substance not theretofore determined by this Court; and that the subject matter of this petition concerns constitutional questions concerning which this Court in the light of events, and applications of an earlier decision of this Court (*United States* v. *Murdock*, 284 U. S. 141) in Federal criminal investigations and litigations, strongly suggests the advisability of a reexamination by this Court of the position formerly taken by it in the *Murdock* case.

## Questions Presented for Review

1. (A) Do the immunity provisions of Title 18, Section 1406, United States Code, grant immunity from state prosecutions?

1. (B) If the immunity provisions of Title 18, Section 1406 of the United States Code do not grant immunity from State prosecutions, is said immunity coextensive with the privilege against self-incrimination under the Fifth Amend-

ment of the Constitution of the United States? And in deciding this question, should not the Supreme Court of the United States re-examine the position it took in *United States* v. *Murdock*, 284 U. S. 141?

2. Was not petitioner denied due process of law by the failure of the District Court to inform him as to the extent of the immunity granted pursuant to Title 18, United States Code, Section 1406, and whether said immunity extended to State prosecutions, before adjudging petitioner to be in contempt of Court?

3. On the facts of the present proceeding, was it not incumbent upon the Government to have made the petitioner an unconditional offer to excuse or remit any unserved portion of the earlier Federal conspiracy sentence that he was then serving and any unpaid fine or forfeiture imposed therein upon the petitioner which penalties were based upon the same matter that he was questioned about by the Grand Jury in this proceeding under the purported grant of immunity pursuant to Title 18, Section 1406, before petitioner could be held in contempt of court?

4. Upon the facts herein was not the sentence of the petitioner to two years imprisonment for contempt of court, excessive and an abuse of discretion?

## Statutory Provisions in Point

Title 18, United States Code, Sec. 401:

"Sec. 401. Power of court

A court of the United States shall have power to punish by fine or imprisonment, at its discretion,

such contempt of its authority, and none other, as * * *.

(3) Disobedience or resistance to its lawful writ, process, order, rule, decree, or command. June 25, 1948, c. 645, 62 Stat. 701."

Title 18, United States Code, Sec. 1406:

"*Immunity of Witnesses*

Whenever in the judgment of a United States attorney the testimony of any witness, or the production of books, papers, or other evidence by any witness, in any case or proceeding before any grand jury or court of the United States involving any violation of—

(1) any provision of part I or part II of subchapter A of chapter 39 of the Internal Revenue Code of 1954 the penalty for which is provided in subsection (a) or (b) of section 7237 of such Code,

(2) subsection (c), (h), or (i) of section 2 of the Narcotic Drugs Import and Export Act, as amended (21 U. S. C., Sec. 174), or

(3) the Act of July 11, 1941, as amended (21 U. S. C., sec. 184a), is necessary to the public interest, he, upon the approval of the Attorney General, shall make application to the court that the witness shall be instructed to testify or produce evidence subject to the provisions of this section, and upon order of the court such witness shall not be excused from testifying or from producing books, papers or other evidence on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture. But no such witness shall be prosecuted or subjected to any penalty or forfeiture for or on account of any trans-

action, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, nor shall testimony so compelled be used as evidence in any criminal proceeding (except prosecution described in the next sentence) against him in any court. No witness shall be exempt under this section from prosecution for perjury or contempt committed while giving testimony or producing evidence under compulsion as provided in this section. Added July 18, 1956, C. 629, Title II, § 201, 70 Stat. 574."

## Concise Statement of the Case

The contempt proceedings which resulted in the judgment of conviction herein were brought pursuant to Title 18 of the United States Code, Section 401(3), and arose out of the petitioner's refusal to testify before a Grand Jury and his invoking his privilege against self-incrimination on being asked questions before said Grand Jury (R4-11, 5a-11a, R55, 24a, R56, 25a) after the United States District Court for the Southern District of New York (Edelstein, *J.*) by order dated December 17, 1958, directed him to so testify and which order purported to grant the petitioner immunity from prosecution pursuant to Title 18 of the United States Code, Section 1406, as amended (R16-18, 16a-18a).

At the hearing on the contempt proceeding held on the 22nd day of January, 1959, before Hon. Archie O. Dawson, United States District Judge, for the Southern District of New York (R54 et seq., 23a et seq.) the petitioner opposed the Government's motion to punish him for contempt on the grounds that Title 18, Sec. 1406 of the United States Code is in violation of the Fifth and Fourteenth Amend-

ments of the United States Constitution in that it does not provide the broad immunity contemplated by said amendments of the Constitution and that several of the questions propounded to the petitioner before the Grand Jury were not within the context of the meaning of the said Statute as enacted (R12-13, 30a).

## *REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT OF CERTIORARI*

### POINT I

**This Court should re-examine the position that it took in *U. S.* v. *Murdock*, 284 U. S. 141, wherein it held that the validity of a federal immunity statute did not require that the immunity apply to state prosecutions.**

The privilege against self-incrimination has come down to us from the English common law and is engraved as a protection against tyranny by the provisions of the Fifth Amendment of the Constitution of the United States. Many attempts to chip away at this privilege have been uniformly condemned by our Courts.

In *Councilman* v. *Hitchcock*, 142 U. S. 547, 35 L. Ed. 1110, 12 S. Ct. 195, the Supreme Court clearly enunciated the rule that Congress cannot abridge a constitutional privilege and that it cannot replace or supplant it unless the immunity provision is so broad as to have the same extent in scope and effect as the privilege had. This Court went on to state at page 585, as follows:

> "* * * We are clearly of opinion that no statute which leaves the party or witness subject to prosecution

> after he answers the criminating question put to him, can have the effect of supplanting the privilege conferred by the Constitution of the United States. • • • "

Since the decision in *Councilman* v. *Hitchcock,* said decision and its meaning have become as controversial as the extent of the constitutional privilege that it sought to define. A number of cases such as *Smith* v. *United States,* 58 Fed. 2nd 735 (CCA 5th, 1932; cert. denied 287 U. S. 631, 77 L. Ed. 547, 53 S. Ct. 82), have held, citing *Councilman* v. *Hitchcock,* as authority, that the statutory immunity granted, to be co-extensive with the privilege under the Fifth Amendment, must afford protection from prosecution in the State as well as Federal courts. (See also *Brown* v. *Walker,* 161 U. S. 591, 40 L. Ed. 819, 16 S. Ct. 644.)

As late as June 1958, Mr. Justice Black, together with Mr. Justice Douglas in their dissent in *Knapp* v. *Schweitzer,* 357 U. S. 371, 2 L. Ed. 2nd 1393, 78 S. Ct. 1302, correctly stated the problem faced by this petitioner when they, in their dissenting opinion at page 385, stated as follows:

> " • • • Indeed things have now reached the point, as the result of United States v. Murdock, 284 U. S. 141, 76 L. ed. 210, 52 S. Ct. 63, 82 ALR 1376, Feldman, and the present case, where a person can be whipsawed into incriminating himself under both state and federal law even though there is a privilege against self-incrimination in the Constitution of each. Cf. Irvine v. California, 347 U. S. 128, 98 L. ed. 561, 74 S. Ct. 381; United States v. Kahriger, 345 U. S. 22, 97 L. ed. 754, 73 S. Ct. 510. I cannot agree that we must accept this intolerable state of affairs as a necessary part of our federal system of government."

Certainly it is time that this Court re-examine the decision in *United States* v. *Murdock*, 284 U. S. 141, 76 L. ed. 210, 52 S. Ct. 63, the case relied on below in holding that the petitioner herein was guilty of contempt in view of the fact that in the opinion of the Courts below this petitioner was granted immunity coextensive with his constitutional privilege where the immunity covered Federal prosecution but probably did not affect possible future State prosecution.

It is also of interest to note that the highest Courts of the State of Michigan held that an immunity statute that does no grant immunity from both federal and state prosecution is unconstitutional under the Constitution of the United States and under the Constitution of the State of Michigan, which contains a provision similar to the Fifth Amendment of the Federal Constitution.[1] The rationale of the Michigan decisions are set forth in the case *In re Watson*, 293 Mich. Reports 263, 291, N.W. 652, wherein the Court stated as follows at page 284:

> " * * * We believe that this ancient privilege should be maintained against limitations that we conceive tend to make it ineffectual, futile, and subversive of the spirit and letter of the Bill of Rights. Under our Federal system of government, with coextensive jurisdiction of State and national government, a person subject to the laws of a state is, at the same time, subject to the laws of the Federal government. A

[1] Constitution of the State of Michigan of 1908
Article 3, Declaration of Rights
* * * Self-Incrimination; Due process of Law. Sec. 16. No person shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law.

citizen of a State is a citizen of the United States (Fourteenth Amendment to the United States Constitution). After a review of the authorities and a consideration of the constitutional provisions and the principles involved, we are of the opinion that the privilege against self-incrimination exonerates from disclosure whenever there is a probability of prosecution in State or Federal jurisdiction." (285)

* * * * *

"To overcome the privilege, the extent of the immunity would have to be of such a nature that it would protect, not only against State prosecution, but also against any reasonable probable Federal prosecution. The claim of the privilege in the face of a State immunity statute cannot be used as a subterfuge or pretense to refuse to answer in proceedings to detect or suppress crime. But neither can the grant of immunity be used to compel answers that will lead straight to Federal prosecution. Whenever the danger of prosecution for a Federal offense is substantial and imminent as a result of disclosures to be made under a grant of immunity by the State, such immunity is insufficient to overcome the privilege against self-incrimination. * * *"

See also *In re Schnitzler*, 295 Mich. 736, 295 N.W. 478; *In re Ward*, 295 Mich. 742, 295 N.W. 483.

There is a similar decision in the State of Illinois. See *People* v. *Burkert*, 7 Ill. 2nd 506, 131 N.E. 2d 495.[2]

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[2] Illinois Immunity Statute; Illinois Revised Statute 1953, Chapter 38, Paragraph 580A, stated that the Court shall deny the Attorney General's motion to compel a witness to testify under a grant of immunity "if it shall reasonably appear to the court that such testimony or evidence, documentary or otherwise would subject such witness to an indictment, information or prosecution * * * under the laws of another State or of the United States; * * *"

There has been no clear test of the constitutionality of the Narcotics Control Act of 1956 up to the present time. The case of *Ullmann* v. *United States*, 350 U. S. 422, 100 L. ed. 511, 76 S. Ct. 497, is distinguishable from the present case in view of the fact that it dealt with the immunity provision of the Subversive Control Act, Title 18, U.S.C. §3486, the subject matter of which was exclusively within the jurisdiction of Congress to the exclusion of the States.

The sole case dealing with the Narcotics Control Act is *Tedesco* v. *United States*, 255 Fed. 2nd 35 (U.S.C.A. 6th), wherein the Sixth Circuit, although it held the immunity section of the Narcotics Control Act constitutional under the rationale of the *Murdock* case, expressed grave doubts as to whether witnesses compelled to testify under such act obtain immunity from prosecution in State courts despite the language of the act, purporting to grant immunity "in any Court." In the *Tedesco* case, the Circuit Court was of the opinion that Federal jurisdiction in the question of narcotics does not oust the States from exercising their jurisdiction as both State and Federal authorities have historically exercised concurrent jurisdiction in narcotics matters and therefore Congress was powerless to grant immunity from State prosecution. For that reason it is quite obvious that the Congress in enacting Title 18, United States Code, Sec. 1406 exceeded its power in purporting to grant immunity "in any Court."

It is respectfully submitted that the immunity provisions of the Narcotics Control Act of 1956 do not in fact grant protection co-extensive with the constitutional privilege granted under the Fifth Amendment of the Constitution of the United States in that the witness is not given protection from prosecution in the State jurisdictions.

Any construction by the Courts to the contrary, in effect would nullify the privilege against self-incrimination as granted in the Federal Constitution and petitioner respectfully submits that this Court should re-examine its position formerly taken in *United States* v. *Murdock* (*supra*) to remedy the adverse effects of that case upon Constitutional rights guaranteed in the Federal Constitution.

## POINT II.

**That the petitioner was denied due process of law by the failure of the lower court to inform him as to the extent of the purported immunity granted pursuant to Title 18, United States Code, Section 1406.**

The Court is referred to the *Tedesco* case heretofore cited on page 11 of this brief and the opinion of Judge Dawson in the present case heretofore cited on page 2 of this brief, wherein the lower Court specifically refused to pass upon the extent of the immunity granted under Title 18, United States Code, Section 1406, as to whether said immunity applied to State prosecutions, citing the *Murdock* case as authority for its refusal to pass on said question.

Certainly the petitioner had a right to be fully advised of his rights by the Court before his refusal to testify pursuant to order of said Court, could be used as a basis for holding him in contempt as was done in the present proceeding.

## POINT III

**The petitioner was not guilty of contempt of Court as the immunity purported to have been offered to him by the government did not amount to a general amnesty or a general pardon for all past offenses, and therefore did not constitute the immunity contemplated by Title 18, United States Code, Sec. 1406.**

The record herein discloses that the petitioner at the time that he was brought before the Grand Jury, was serving a five year sentence for violation of the Federal Narcotics Law, the charge being conspiracy, he having been convicted of the said crime on the 21st day of March, 1956 (R. 4, 5a, R. 55, 24a). A reading of the various questions propounded to the appellant before the Grand Jury, both before and after the order purporting to grant immunity, was made (R. 4-11, 5a-11a, R. 21, 21a, R. 60, 27a), shows that most of these questions dealt with matters relating to the crime that the petitioner was previously convicted of and for which he was then serving a prison sentence. While that conviction related to the crime of conspiracy to violate the Federal Narcotics Laws, there was a very strong probability that the petitioner at the time he was ordered to testify before the Grand Jury, might face possible criminal charges for other Federal crimes, such as substantive violations of the Federal Narcotics Laws, violation of the Federal Internal Revenue Laws and of the Narcotics Laws of the State of New York,[3] bringing this case out of the scope

[3] The statute of limitations on Federal offenses is set forth in Title 18, Section 3282 and is a five year period.

Applicable Statute of Limitation for violation of the State laws is set forth in Section 142 of the Code of Criminal Procedure of the State of New York and fixes a five year period as the statute of limitations.

of *Brown* v. *Walker*, 161 U. S. 591, 40 L. Ed. 819, 16 S. Ct. 644 which dealt with a fear of imaginary and unsubstantial character.

The history underlying the attempts to emasculate the constitutional safeguards against self-incrimination by trying to compel witnesses to testify to criminal acts through the forced offer upon them of immunity, shows that our Courts invariably insisted that the immunity provided by the so-called immunity statutes be co-extensive with the broad immunity contained in the provisions of the Fifth and Fourteenth Amendments of the Federal Constitution.

The Supreme Court of the United States held that even though the Constitution vests in the President the power to grant reprieves and pardons for offenses against the United States, a person offered such pardon as a condition that he testify need not accept it and if he rejects such offer, cannot be compelled to testify in violation of his constitutional rights (see *Burdick* v. *United States*, 236 U. S. 79, 59 L. Ed. 476, 35 S. Ct. 267). In the *Burdick* case it was held that a pardon issued by President Wilson to one Burdick, which sought to pardon him for any offense committed by him that Burdick be compelled to testify to before a Grand Jury, did not remove Burdick's privilege against self-incrimination when Burdick refused to accept the President's pardon.

Likewise in *Isaacs* v. *United States*, 256 Fed. 2nd 654 (U. S. C. A. 8th, 1958), which involved an appeal from a judgment finding the defendant guilty of contempt, a case not involving an immunity statute, it was held that in a situation where a witness invoked the Fifth Amendment before a Grand Jury, the Court did not have the authority to grant immunity from prosecution to the witness and thus compel him to testify before the Grand Jury.

While Congress has the power to pass statutes granting immunity to witnesses in certain circumstances, that power cannot be lightly used and the immunity granted must be co-extensive with that provided for by the Federal Constitution.

In *Brown* v. *Walker, supra,* involving the immunity provision in the Interstate Commerce Act, which provision granted absolute immunity against Federal or State prosecution, the Court stated at page 601, as follows:

> "* * * The act of Congress in question securing to witnesses immunity from prosecution is virtually an act of general amnesty, and belongs to a class of legislation which is not uncommon either in England (2 Taylor on Evidence, Sec. 1455, where a large number of similar acts are collated,) or in this country. Although the Constitution vests in the President 'power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment,' *this power has never been held to take from Congress the power to pass acts of general amnesty, and is ordinarily exercised only in cases of individuals after conviction,* although as was said by this Court in Ex parte Garland, 4 Wall 333, 380, 'it extends to every offense known to the law, and may be exercised at any time after its commission, either before legal proceedings are taken, or during their pendency, or after conviction and judgment.' * * *

The Court further stated at page 602:

> "* * * Amnesty is defined by the lexicographers to be *an act of the sovereign power granting oblivion, or a general pardon for a past offense,* and is rarely, if ever, exercised in favor of single individuals, and

> is usually exerted in behalf of certain classes of persons, who are subject to trial, but have not yet been convicted. * * *" (Italics ours)

It is quite obvious that in *Brown* v. *Walker, supra,* the Court upheld the immunity provision in the Interstate Commerce Act on the basis of the power of Congress to grant general amnesty for past offenses.

It is clear from the aforementioned cases that the Courts have consistently held that the privilege against self-incrimination cannot be removed by the President without the consent of the witness (see *Burdick* v. *United States, supra*) nor by the Court (see *Isaacs* v. *United States, supra*), and that the only justification for the passing of immunity statutes is based upon the right of general amnesty that is inherent in Congress to grant.

The Government, having selected the petitioner as a witness to testify although he was already convicted and imprisoned for a past offense, which was the crime dealt with in the questions propounded to the petitioner before the Grand Jury, it was incumbent upon the Government to grant the petitioner a full amnesty to cover the unexpired portion of his sentence he was then serving, as required by the language of the statute which in referring to the immunity purported to be granted reads as follows:

> "But no such witness shall be prosecuted *or subjected to any penalty* for or on account *of any* transaction, matter or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence." (Italics ours)

The petitioner was not offered such amnesty. He was merely offered immunity against prosecution for other Federal offenses that may come to surface as a result of his testimony. The petitioner was therefore not offered the immunity contemplated by the statute and cases and was not granted what, in the language of the Supreme Court in *Brown* v. *Walker, supra,* is referred to as "an act of general amnesty * * *, or an act of the sovereign power granting oblivion or a general pardon for a past offense", if he testified. He was therefore not guilty of contempt of court in refusing to obey an order directing him to answer certain questions before the Grand Jury as no valid offer of immunity was made to him as contemplated by Title 18, United States Code, Section 1406.

## POINT IV

**The sentence of the petitioner to two years imprisonment for contempt of Court was excessive.**

The record discloses that the petitioner at the time that he was questioned before the Grand Jury was serving a jail sentence of five years imprisonment and a fine of $10,000.00 for a crime based upon the facts that he was questioned about before the Grand Jury (R. 4, 5a, R. 2, 24a). Certainly the sentence of the Court below and the judgment of conviction herein based upon the alleged contempt of Court set forth in these proceedings wherein petitioner was sentenced to two years additional imprisonment to commence at the expiration of the sentence the petitioner is now serving is excessive under the circumstances and in effect amounts to double punishment for the same crime if not double jeopardy and was an abuse by the lower Court of

its discertion which is reviewable by this Court (see *Worden* v. *Searls*, 121 U. S. 14, 30 L. Ed. 853, 7 S. Ct. 814).

## CONCLUSION

**The petition for certiorari should be granted and this Court in the exercise of its powers should order the judgment, adjudging petitioner guilty of contempt, reversed and the matter remanded to the appropriate court, with directions that the government's motion to punish petitioner for contempt, be denied.**

Respectfully submitted,

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# APPENDIX

## UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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No. 169—October Term, 1959.

(Argued December 9, 1959 Decided December 30, 1959.)

Docket No. 25644

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UNITED STATES OF AMERICA,

*Appellee,*

—v.—

GIACOMO REINA,

*Appellant.*

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Before:

SWAN and FRIENDLY, *Circuit Judges*, and
HERLANDS, *District Judge.*

---

Appeal from a judgment of the United States District Court for the Southern District of New York, Dawson, *J.*, adjudging appellant guilty of criminal contempt of court for refusing to obey an order directing him to answer certain questions before a federal grand jury. Affirmed.

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ALLEN S. STIM, *Attorney for Appellant.* Menahem Stim, of Counsel.

S. HAZARD GILLESPIE, JR., United States Attorney, *for Appellee.* Joseph DeFranco, Daniel P. Hollman, George I. Gordon, Assistant United States Attorneys, of Counsel.

## *Appendix*

PER CURIAM:

Pursuant to 18 U. S. C. A. §401(3) appellant was convicted of criminal contempt of court and was sentenced to two years imprisonment for refusing to answer certain questions before a federal grand jury inquiring into alleged violations of the narcotics laws, after he had been granted immunity under 18 U. S. C. A. §1406 and had been ordered by the court to answer the questions. Judge Dawson's well reasoned opinion is reported in 170 F. Supp. 592.

Appellant attacks the constitutionality of §1406. His principal argument is that the immunity granted under this statute will not protect him from state prosecutions. That a federal immunity statute need not do so was settled long ago in *United States* v. *Murdock*, 284 U. S. 141.[1] He says that the courts should re-examine the *Murdock* decision. But, obviously, such re-examination is not for this court to make.

At the time of his appearance before the grand jury appellant was serving a prison sentence for conspiracy to violate the narcotic laws.[2] The grand jury sought to question him concerning this crime. Seizing upon certain expressions in *Brown* v. *Walker*, 161 U. S. 591, which sustained the constitutionality of a federal immunity statute similar to §1406, appellant makes the fantastic contention that §1406 is unconstitutional as applied to him because it does not grant a "general amnesty" or "pardon" for his

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[1] See also *Knapp* v. *Schweitzer*, 357 U. S. 371, 380; *Tedesco* v. *United States*, 6 Cir., 255 F. 2d 35; *Corona* v. *United States*, 6 Cir., 250 F. 2d 578, cert. den. 356 U. S. 954.

[2] His conviction was affirmed in *United States* v. *Reina*, 2 Cir., 242 F. 2d 302, cert. den. 354 U. S. 913.

past offense. The error in this argument is that it attempts to convert a general discussion in the *Brown* v. *Walker* opinion, page 601, as to the power of Congress to pass acts of general amnesty into an independent principle of law, requiring appellant's past offense to be pardoned. No authority is cited to support this extraordinary contention.[3]

Additional points made by appellant have been considered but are so plainly without merit that they require no discussion.

Judgment affirmed.

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[3] For decisions rejecting the contention, see *People ex rel. Hunt* v. *Lane*, 116 N. Y. S. 990, aff'd 196 N. Y. 520; *People* v. *Fine*, 19 N. Y. S. 2d 275; *People ex rel. Gross* v. *Sheriff*, 101 N. Y. S. 2d 271, aff'd 302 N. Y. 173.